

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KONONOV VITALY,

Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF
DEPARTMENT, et al.,

Defendants.

No. 2:22-cv-01916-DAD-DMC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS

(Doc. No. 16)

Plaintiff Kononov Vitaly is a former state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 14, 2024, the assigned magistrate judge screened plaintiff's second amended complaint ("SAC") and found that plaintiff had sought relief as to three claims brought against all the named defendants: (1) an Eighth Amendment conditions-of-confinement claim for denying plaintiff access to the dayroom and showers; (2) an Eighth Amendment conditions-of-confinement claim for denying plaintiff access to an outside recreational area; and (3) an Eighth Amendment retaliation claim. (Doc. No. 15 at 3–4.) The magistrate judge then determined that plaintiff had alleged cognizable conditions-of-confinement claims pursuant to the Eighth Amendment against defendants Leahy and Vice. (Doc. No. 15 at 4.) The magistrate judge found

that plaintiff had not alleged any facts that a municipal policy or custom that resulted in a constitutional violation, barring a finding of liability against defendants Rio Consumnes Correctional Center and Sacramento County Sheriff's Department, nor any facts to show that defendant Sheriff Jones, as a supervisor, was personally involved in the alleged constitutional violations. (*Id.* at 4–6.) The magistrate judge further found that plaintiff had not alleged any facts to establish a causal connection between any defendant and claimed instances of retaliation. (*Id.* at 6.) The magistrate judge granted plaintiff leave to file a third amended complaint within thirty (30) days of the service of that order. (*Id.* at 7.) Plaintiff did not file a third amended complaint within that time.

On August 1, 2024, the magistrate judge issued findings and recommendations recommending that this action proceed on plaintiff's SAC on his Eighth Amendment conditions-of-confinement claims against defendant Leahy and Vice, and that all other claims and defendants be dismissed with prejudice due to plaintiff's failure to state a cognizable claim against them. (Doc. No. 16 at 2.) The pending findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 2.) To date, no objections have been filed, and the time in which to do so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

Accordingly,

1. The findings and recommendations issued on August 1, 2024 (Doc. No. 16) are adopted in full;
2. This action shall proceed only on plaintiff's Eighth Amendment conditions-of-confinement claims brought against defendants Leahy and Vice.
3. All other claims brought by plaintiff in this action are dismissed; and

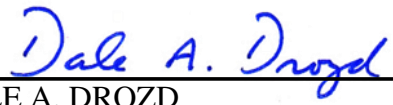
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1 4. This action is referred back to the assigned magistrate judge for further
2 proceedings consistent with this order.

3 IT IS SO ORDERED.

4 Dated: **November 13, 2024**



DALE A. DROZD
UNITED STATES DISTRICT JUDGE